

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DIANNE P. HOLLOWAY and JOHN HOLLOWAY

PLAINTIFFS

V.

CIVIL ACTION NO.1:06CV192 LTS-RHW

**ALLSTATE INSURANCE COMPANY
and COMMUNITY BANK**

DEFENDANTS

MEMORANDUM OPINION

The Court has before it Plaintiffs' motion to remand this action to the Circuit Court of Harrison County, Mississippi. Defendant Allstate Insurance Company (Allstate) has removed this action requesting that the parties be realigned to reflect their true interests in this controversy. If the parties are realigned, as requested by Allstate, there will be complete diversity of citizenship and the requisite amount in controversy under 28 U.S.C. §1332.

Plaintiffs Diane and John Holloway are the named insureds under a homeowners policy issued by Defendant Allstate. Defendant Community Bank is the holder of a note secured by a deed of trust on the insured residential property and a loss payee under the Allstate policy. The underlying dispute in this action concerns the adjustment of insured losses that occurred during Hurricane Katrina.

The state court complaint states no cause of action against Community Bank. The complaint asserts only that the bank is a necessary party. (Complaint Paragraph III)

It appears to me that the interests of the plaintiffs and the bank are aligned in this action. Both plaintiffs and the bank will benefit from a successful recovery under the Allstate policy. In these circumstances, realignment is proper, even after removal. *See: Jackson HMA, Inc. v. St. Paul Fire & Marine Ins. Co.*, 246 F.Supp2d 535 (S.D.Miss.2003).

Accordingly, I will treat Defendant Allstate's request for realignment as an ore tenus motion for that relief, and that motion will be granted. Plaintiffs' motion to remand will be denied.

An appropriate order will be entered.

Decided this 3rd day of August, 2006.

s/ L. T. Senter, Jr.

L. T. Senter, Jr.
Senior Judge